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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/669,631	09/25/2003	Reg MacQuarrie	US 1356/03	4471

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EXAMINER

TARAZANO, DONALD LAWRENCE

ART UNIT

PAPER NUMBER

1773

DATE MAILED: 07/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/669,631

Applicant(s)

MACQUARRIE, REG

Examiner

D. Lawrence Tarazano

Art Unit

1773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/25/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 2-5 and 8 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Mayer et al. (5,322,866).

3. Mayer et al. teach a film forming composition comprising 20-80% PVOH and 10-20% glycerol (column 3, lines 48+). The composition also comprises starch and water. "Water is added to facilitate melting of the starch and blending with the copolymer during production. The final moisture content of the film is between five (5) and eight (8) percent..." The examples also show water content within the claimed range.

4. The composition is extruded and blown to form a film.

5. Regarding claims 3 and 4, the examiner notes that up to includes zero so these are treated as optional components.

6. While the applicants state that their material is "for meat packing" this is merely intended use and the composition and films taught would be suitable for that purpose.

7. Regarding claim 8, since PVOH is made from polyvinyl acetate via hydrolysis, no PVOH is ever completely hydrolyzed.

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Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mayer et al. (5,322,866).

10. Regarding claim 6, it would have been obvious to one having ordinary skill in the art to have added color to the films taught by Mayer et al. depending on the end use of the film. The addition of color would merely relate to esthetics.

11. Regarding claim 7, Mayer et al. describe a possible die size and configuration in the examples, but they are silent regarding the thickness of the films. However, variations in thickness are well within the ordinary skill in the art. It would have been obvious to one having ordinary skill in the art to have varied the thickness of the films depending on the end use of the materials.

12. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mayer et al. (5,322,866) in view of either:

Compendium of Food Additives, "Gellan gum" <http://www.fao.org/docrep/W6355E/w6355e0f.htm>, 1997, OR

"Konjac gum" Konjac Glucomannan, <http://www.gy.com/it/> (undated) (used since 1997)

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13. Mayer et al. teach that "starches from different sources may be blended to obtain desired physical properties of the blown film product" (column 2, lines 68+). These starches are not limited to starches that are neither deconstructed nor gelatinized.

14. Each Konjac gum and Gellan gum are polysaccharides (starches). Konjac gum is also useful in the production of films and is biodegradable (page 2). It would have been obvious to one having ordinary skill in the art to have used either of these materials in the compositions taught by Mayer et al. as they starches that have clearly defined properties.

Response to Arguments

15. Applicant's arguments filed 4/1/05 have been fully considered but they are not persuasive.

16. The applicants argue that the films made by Mayer et al. (5,322,866), are not water-soluble. *In arguendo*, the films do not require any particular level of solubility, and films taught by Mayer et al. do not contain ingredients that would make them suitable for as a meat packaging film. While the applicant provided reasons why the film taught by Mayer et al. might be less soluble than the films produced by the instant method, this does not negate the fact that the films are made of the same materials and would be water soluble for this reason.

Conclusion

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. Lawrence Tarazano whose telephone number is (571)-272-1515. The examiner can normally be reached on 8:30 to 6:00 (off every other Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on (571)-272-1284. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


D. Lawrence Tarazano
Primary Examiner
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